

1 The Honorable Benjamin H. Settle
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

9 AMERICAN DELTA PARTY; and
10 ROQUE "ROCKY" DE LA FUENTE,
11

Plaintiffs,

12 v.
13

KIM WYMAN, in her official capacity as
the Secretary of State of the State of
Washington,

14 Defendant.
15

NO. 3:20-cv-05045-BHS

REPLY IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

**NOTE ON MOTION
CALENDAR:**

August 7, 2020

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I. INTRODUCTION

In order to appear on the ballot as a minor party or independent candidate for President, the party or candidate must provide a petition signed by 1,000 registered voters, which currently represents 0.022 percent of registered voters in Washington. Those signatures must be gathered at an “organized assemblage.” Minor parties in Washington routinely satisfy these requirements and appear on the general election ballot and will do so again in 2020. This is an uncommonly minor burden: Almost all other states require *far* more signatures.

Washington’s signature-gathering requirement has two components—the *number* of signatures and the *manner* in which those signatures are gathered—that cannot be separated in the manner that Plaintiffs suggest. While Washington law permits ballot access with an exceptionally small number of signatures, it insists on a signature collection method that provides an opportunity for voter education and reflects meaningful support.

Plaintiffs' evidentiary arguments lack merit. It is well established that, in this context, the question of whether a State has a legitimate interest is a question of law. Courts may consider any *conceivable* interest, even interests not raised by the parties. This is especially true where, as here, the burden imposed by Washington law is *de minimis*.

This Court should grant the Secretary's motion for summary judgment in its entirety.¹

II. STATEMENT OF THE CASE

A. Effect of Fee Waiver in Washington's 2020 Election for Governor

Washington law requires that candidates for certain offices pay a filing fee equal to one percent of the annual salary for the office. Wash. Rev. Code § 29A.24.091(1). If a candidate cannot afford the filing fee, the candidate may instead submit a “filing fee petition” containing a number of signatures equal for the number of dollars of the filing fee. Wash. Rev. Code § 29A.24.091(4). Due to the COVID-19 pandemic, Washington Governor Jay Inslee suspended

¹ Notably, Plaintiffs clarify they make only a facial challenge to the law, Dkt. 34 at 7, and do not in any way rely on the impact of COVID-19. And Plaintiffs do not oppose granting summary judgment on Counts VI and VII of their Amended Complaint. *See id.* at 24.

1 the filing fee petition requirement for candidates who were unable to pay the filing fee. Second
 2 Decl. of Lori Augino, ¶ 3. Nine candidates took advantage of this waiver of the ballot access
 3 restriction and filed to run for Governor. *Id.*, ¶ 4. As of August 7, 2020, a preliminary count
 4 reflects that each was a frivolous candidate, garnering between 338 and 6,966 votes, representing
 5 between 0.02 and 0.41 percent of the total votes cast for Governor. *Id.*, ¶¶ 5-6.

6 **B. Minor Party Presidential Candidate Certificates of Nomination in 2020**

7 So far, the Office of the Secretary of State has received seven certificates of nomination
 8 from minor political parties seeking ballot access for their presidential and vice presidential
 9 nominees. *Id.*, ¶ 7. This includes a certificate and signed petitions from the Alliance Party, which
 10 seeks to nominate Mr. De La Fuente. *Id.*, ¶ 8. The Alliance Party submitted Mr. De La Fuente's
 11 consent to nomination. *Id.* The Office of the Secretary of State is currently verifying the
 12 signatures on these petitions and anticipates completing the verification process no later than
 13 August 21, 2020.² *Id.*, ¶ 7. It has already verified that two minor parties will appear on the 2020
 14 general election ballot. *Id.*

15 **C. Overview of State Statutory Schemes for Minor Party Presidential Candidate Ballot
 16 Access**

17 Ballot access requirements for would-be minor party presidential candidates vary widely
 18 by state. In Washington, such candidates must gather 1,000 signatures (representing 0.022
 19 percent of registered voters) at an organized assemblage. Wash. Rev. Code §§ 29A.56.600, .610.
 20 While the Secretary is not aware of any other State that requires that minor party presidential
 21 candidates gather signatures as organized assemblages,³ the vast majority of states impose more
 22 onerous requirements regarding the number of signatures.

23

24 ² The Secretary intends to file a short supplemental declaration when signature verification is complete to
 25 inform the Court as to how many minor party candidates for president qualified for general election ballot access in
 26 2020.

³ In some instances, Oregon requires that presidential candidates who are not members of a recognized
 minor party hold an assembly of at least 1,000 electors gathered in one place and collect those signatures. Or. Rev.
 Stat. § 249.735.

1 The States within the Ninth Circuit are a fairly representative microcosm. Assuming that
 2 a minor party stands in the same position as the American Delta Party stands in Washington,
 3 those states would impose the following ballot access requirements for its presidential candidate:

- 4 • **Alaska:** A petition containing signatures of one percent of the number of voters who cast
 5 ballots for President⁴ at the last presidential election. Alaska Stat. § 15.30.025(a).
- 6 • **Arizona:** A petition containing signatures of one and one-third percent of the total votes
 7 cast for governor at the previous general election, provided (a) signers come from five
 8 different counties and (b) at least ten percent of the required signatures are from counties
 9 with populations of less than 500,000 persons. Ariz. Rev. Stat. Ann. § 16-801(A).
- 10 • **California:** (a) a petition signed by ten percent of persons voting in the previous
 11 gubernatorial election or (b) voter-registration preferences for the party of 0.33 percent
 12 of registered voters.⁵ Cal. Elec. Code § 5151(c)-(d); *cf. Common Sense Party v. Padilla*,
 13 No. 2-20-CV-0109-1-MCE-EFB, 2020 WL 3491041, at *1-2 (E.D. Cal. June 26, 2020)
 14 (describing operation of voter-registration qualification method).
- 15 • **Hawaii:** A petition with signatures of at least one percent of votes cast at the previous
 16 presidential election. Haw. Rev. Stat. § 11-113(c)(2).
- 17 • **Idaho:** A petition containing signatures of at least two percent of qualified electors who
 18 cast a vote for President at the previous general election. Idaho Code § 34-501(1)(c)(C).
- 19 • **Montana:** A petition containing 5,000 signatures.⁶ Mont. Code Ann. § 13-10-504(1), (3).
- 20 • **Nevada:** A petition signed by one percent of votes cast for congressional representatives
 21 at the previous general election. Nev. Rev. Stat. § 293.1715(2)(c).
- 22 • **Oregon:** A petition signed by 1.5 percent of votes cast in the most recent general election
 23 at which a candidate for Governor was elected. Or. Rev. Stat. §§ 248.008(1)(a), 249.705.

24
 25 ⁴ For reference, Washington's requirement represents approximately 0.031 percent of the votes cast for
 president—and also for Governor—in 2016.

26 ⁵ In Washington, voters do not record a party preference when registering to vote.

⁶ For reference, this represents approximately 0.98 percent of votes cast for Governor in 2016.

III. ARGUMENT

A. Two Misunderstandings Underlie Plaintiffs' Arguments

Throughout their brief, Plaintiffs base their argument on two misunderstandings of Washington law. First, Plaintiffs rely on an erroneous interpretation of the term “convention,” which leads them to mistaken conclusions about its burden. In reality, Washington law does not impinge on the ability of minor political parties to select their own candidates and electors; it simply requires that parties gather signatures at organized assemblages. Second, Plaintiffs wrongly attempt to isolate one component of Washington’s signature gathering requirement in an attempt to divorce it from the underlying justification. This is incorrect. Washington law ensures “a significant modicum of support,” *Jenness v. Fortson*, 403 U.S. 431, 442 (1971), by requiring a very small number of signatures, but with the trade-off that the smaller number of people must more meaningfully demonstrate support by attending an organized assemblage.

1. The “convention” component merely requires that signatures be gathered at an “organized assemblage”

Plaintiffs overstate the burden of Washington’s ballot access laws by ignoring the definition of “convention.” Properly understood, the convention component of the signature gathering requirement means only that the required signatures must be gathered at an “organized assemblage.” Wash. Rev. Code § 29A.56.600. This addresses whether a minor political party’s candidates for President and Vice President may appear on the ballot in Washington.

Washington law does not dictate the manner in which a minor political party selects its nominees for President and Vice President or its electors. A minor political party is free to select its candidates for President and Vice President of the United States pursuant to the party's bylaws and then hold the required organized assemblage to gather signatures. Similarly, a minor political party is free to establish rules governing the selection of electors at its organized assemblage. A minor political party could, for example, require that electors be members of the party or provide that, by signing the nominating petition for the candidates, convention attendees agree to select

1 a slate of electors already chosen by the minor political party.⁷ While the term “convention,” in
 2 a political context, may call to mind an elaborate affair replete with delegates, speakers, and
 3 party platform debates, Washington law demands far less—merely an “organized assemblage”
 4 at which the required 1,000 signatures are gathered. Wash. Rev. Code §§ 29A.56.600, .610.

5 Many of Plaintiffs’ arguments ring hollow in light of the statutory definition of
 6 “convention.” For one, Plaintiffs’ reliance on *Cousins v. Wigoda*, 419 U.S. 477 (1975), is
 7 misplaced. *Cousins* stands for the proposition that a State generally may not interfere with a
 8 national political party’s process for selecting presidential candidates. *Id.* at 489-91.
 9 Washington’s convention requirement does not address this; rather, it addresses only whether a
 10 party’s selected candidates will appear on the ballot in Washington. For the same reason,
 11 Plaintiffs’ numerous other arguments related a State’s ability to regulate the internal affairs of a
 12 political party are inapplicable here.

13 **2. The signature gathering requirements are inextricably intertwined**

14 Plaintiffs repeatedly attempt to distinguish between the requirement of 1,000
 15 signatures—which they concede is permissible—and the requirement that the signatures be
 16 gathered at an organized assemblage. But courts “examine the entire statutory scheme regulating
 17 ballot access,” not isolated provisions. *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 730 (9th
 18 Cir. 2015) (quoting *Nader v. Cronin*, 620 F.3d 1214, 1217 (9th Cir. 2010)).

19 Consideration of Washington’s ballot access laws as a whole is particularly important
 20 here. Washington could have required *many* more signatures in order to qualify for ballot access.
 21 Under *Arizona Libertarian Party v. Hobbs*, 925 F.3d 1085, 1091 (9th Cir. 2019). Washington
 22 could have required signatures from up to five percent of registered voters—227,650
 23 signatures—without triggering strict scrutiny. Instead, Washington has opted to require a mere
 24 1,000 signatures—representing 0.022 percent of registered voters—on the condition that the

25
 26 ⁷ It remains true, as the State pointed out in briefing in earlier litigation, that notice of a convention will
 frequently be a necessary condition for a member of the public to seek appointment as an elector for a minor political
 party. Dkt. No. 35-1, pp. 19-20. That does not mean that it is sufficient.

1 signatures are obtained at an organized assemblage, with notice to the public. The requirement
 2 that signatures be obtained at an organized assemblage is an integral part of the signature
 3 gathering requirement. While Plaintiffs may believe that a requirement of 1,000 signatures is
 4 sufficient to establish a significant modicum of support, *see* Dkt. 34 at 13, Washington “is free
 5 to choose its ballot access requirements from [a] constitutional spectrum” of requirements. *Green*
 6 *v. Mortham*, 155 F.3d 1332, 1339 (11th Cir. 1998).⁸

7 Plaintiffs’ disagreement with the premise inherent to Washington law is irrelevant.
 8 Plaintiffs disagree with the premise that a signature gathered from a person who attends an
 9 organized assemblage represents a greater degree of support than a signature gathered by a
 10 roaming signature-gatherer or that requiring an organized assemblage promotes voter education.
 11 *See* Dkt. 34 at 17-18. But the premise reflects a reasonable legislative judgment. A person who
 12 decides to attend an organized assemblage demonstrates greater support than a person signing a
 13 petition on a whim while running errands. California law similarly recognizes that a mere
 14 signature is less meaningful than other action, requiring either signatures of ten percent of voters
 15 or registration of 0.33 percent of voters who have declared preference for that party. Cal. Elec.
 16 Code § 5151(c)-(d). Washington law provides an opportunity for others to come to the organized
 17 assemblage and provide potential signers with more information.

18 While Washington’s method of ensuring community support and voter education may be
 19 somewhat unique, this reflects a virtue of federalism—that States serve as laboratories of
 20 democracy. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2673
 21 (2015) (“This Court has long recognized the role of the States as laboratories for devising
 22 solutions to difficult legal problems.” (internal quotation marks omitted)).

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 24
 25 ⁸ In other contexts, Washington law demands far more signatures for ballot access. Placement of a
 26 referendum measure on the ballot requires signatures of four percent of the votes cast for governor at the last
 gubernatorial election. Wash. Const. art. II, § 1(b). Placement of an initiative measure on the ballot requires
 signatures requires *eight* percent of such votes. *Id.* art. II, § 1(a).

1 **B. Washington's Minor Party Presidential Nomination Process Complies with**
 2 **Constitutional Requirements**

3 Washington's ballot access provisions for third party presidential candidates do not
 4 impose a "severe" burden. Dkt. 34 at 6-8. Plaintiffs do not dispute this and cannot create a
 5 genuine dispute of material fact. As a result, there are three inquiries for this Court: (1) whether
 6 the State has identified "important regulatory interests," and (2) whether there is a reasonable fit
 7 between those interests and the means of accomplishing them; and (3) whether the State's
 8 interests justify the restrictions. *Burdick v. Takushi*, 504 U.S. 428, 434, 439-40 (1992).

9 **1. Washington has important interests in ballot access laws**

10 States' well-settled and legitimate interests in limiting ballot access apply in the context
 11 of presidential elections. In several instances, Plaintiffs appear to suggest that States have no
 12 legitimate interest in regulating presidential elections. *See* Dkt. 34 at 8, 12, 14. But courts
 13 regularly find legitimate interests with respect to presidential elections and uphold reasonable
 14 ballot restrictions. *E.g.*, *De La Fuente v. Padilla*, 930 F.3d 1101, 1106 (9th Cir. 2019).

15 Washington has a legitimate interest in voter education. Plaintiffs appear to question this
 16 interest, Dkt. 34 at 16, but the Supreme Court's decision in *Anderson v. Celebreeze*, 460 U.S.
 17 780, 796 (1983), clearly establishes that, even with respect to presidential elections, "[t]here can
 18 be no question about the legitimacy of the State's interest in fostering informed and educated
 19 expressions of the popular will in a general election."

20 Washington also has a legitimate interest in ensuring that candidates have a "significant
 21 modicum of support." *De La Fuente*, 930 F.3d at 1105-06 (9th Cir. 2019) (quoting *Jenness*, 403
 22 U.S. at 442). Plaintiffs appear to concede this. *See* Dkt. 34 at 8.

23 Plaintiffs do not contest Washington's other interests, including avoiding confusion,
 24 deception, and even frustration of the democratic process at the general election and streamlining
 25 the ballot, avoiding ballot overcrowding, and reducing voter confusion. Dkt. 29 at 14-15.

1 **2. The requirement that signatures be gathered at organized assemblages
2 reasonably advances Washington's interests**

3 The signature gathering requirement reasonably advances Washington's interest in an
4 informed electorate. By requiring that candidates gather signatures at organized assemblages and
5 provide notice to the public of time and location of those events, Washington law offers the
6 public an opportunity to provide would-be petition signers with additional information about the
7 candidate and party. For example, an anti-discrimination organization could stand near the
8 assemblage and hand out leaflets revealing that a would-be candidate holds anti-Semitic views.
9 Additionally, requiring an organized assemblage ensures that all members of the public can
10 attend and learn more about the candidate and minor party.

11 The signature-gathering requirement also reasonably advances Washington's interest in
12 ensuring that a candidate enjoys a significant modicum of public support. It does so in at least
13 two ways. First, it requires that potential supporters take the affirmative step of attending an
14 organized assemblage. This demonstrates meaningful support. Second, it advances that interest
15 by creating an opportunity for additional voter education. By creating the opportunity for
16 counter-speech, Washington law decreases the likelihood that a voter, due to incomplete
17 information, will sign a petition for a candidate whose views they do not actually support.

18 For the undisputed reasons discussed in the Secretary's motion for summary judgment,
19 the signature-gathering requirement advances Washington's interests in excluding frivolous
20 candidates, avoiding ballot overcrowding, and streamlining the ballot. Dkt. 29 at 15; *see also*
21 Second Augino Decl., ¶ 6.

22 Plaintiffs suggest that they may have skirted the "organized assemblage" requirement
23 and simply gathered signatures from passersby at a ferry terminal. Dkt. 34 at 17-18. This case is
24 not about whether Plaintiffs have complied with the law. However, even assuming that Plaintiffs
25 merely gathered signatures at a ferry terminal and that this complied with the "organized
26 assemblage" requirement, the requirement still advances all of Washington's interests (with the

1 possible exception of ensuring that supporters have taken an affirmative step). The only
 2 meaningful difference Plaintiffs' allegation would make to the constitutional analysis would be
 3 to establish that the burden on parties and candidates is even more *de minimis*.

4 **3. On balance, the State's interests readily justify the limitation**

5 The final step in the *Anderson-Burdick* framework is to "weigh 'the character and
 6 magnitude of the asserted injury' . . . against 'the precise interests put forward by the State as
 7 justifications for the burden imposed by its rule . . .'" *Burdick*, 504 U.S. at 434 (quoting
 8 *Anderson*, 460 U.S. at 789). "[A] State's 'important regulatory interests' will usually be enough
 9 to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons v. Twin Cities Area New Party*,
 10 520 U.S. 351, 358 (1997) (quoting *Burdick*, 504 U.S. at 434). Because strict scrutiny does not
 11 apply, the State need not demonstrate that its laws are "necessary to remedy an actual evil."
 12 Dkt. 34 at 13.

13 Washington's important interests more than justify the very minor burden imposed by
 14 the signature gathering requirement (which borders on *de minimis*). The burden consists of
 15 (1) the cost of providing notice of the organized assemblage(s), which has historically been just
 16 several hundred dollars, Dkt. 31 at 4, ¶¶ 20-21; (2) obtaining the support of 1,000 registered
 17 voters; (3) persuading the registered voters to participate in an organized assemblage; (4) a brief
 18 10-day period between publishing notice and holding the organized assemblage, Wash. Rev.
 19 Code § 29A.56.620. Two facts clearly illustrate just how minimal the burden is. First, the total
 20 number of signatures is *far* fewer than most States require of minor party candidates. *See supra*
 21 at 3. Second, minor party candidates routinely satisfy these requirements, Dkt. 31 at 2, ¶¶ 4-6,
 22 and will do so again this year, *see* Second Augino Decl., ¶ 7.

23 Washington's important interests in an informed electorate, ensuring a significant
 24 modicum of support, excluding frivolous candidates, avoiding ballot overcrowding, and
 25 streamlining the ballot all readily outweigh the very minor burdens imposed on minor political
 26 parties. Washington's signature-gathering requirement is constitutional.

1 **C. Plaintiff's Equal Protection Arguments Lack Merit**

2 Plaintiff American Delta Party acknowledges that it is not similarly situated with major
 3 political parties with respect to its demonstrating a showing of community support. Dkt. 34 at 20-
 4 21. This is fatal to its Equal Protection Clause argument. *See Van Susteren v. Jones*, 331 F.3d
 5 1024, 1027 (9th Cir. 2003). For the reasons discussed above, the requirement that 1,000
 6 signatures be gathered at an organized assemblage is an integral part of demonstrating a
 7 significant modicum of community support in Washington. Washington law provides that a very
 8 small number of signatures is sufficient, where those signatures represent that the signers were
 9 willing to attend a party's organized assemblage and signed notwithstanding the opportunity to
 10 voter education by third parties. Having acknowledged that it is not similarly situated with major
 11 political parties with respect to demonstrating a significant modicum of support, the American
 12 Delta Party has acknowledged that its equal protection challenge fails.

13 **D. The Secretary Has Satisfied Her Burden on Summary Judgment**

14 Plaintiffs clarify that they bring only a *facial* challenge to the State's ballot access laws;
 15 they advance no argument that the statute is uniquely unconstitutional as applied to them. *See*
 16 Dkt. 34 at 7. Facial challenges to the constitutionality of statutes frequently involve pure
 17 questions of law appropriate for resolution on summary judgment and without discovery. *See*,
 18 *e.g.*, *Davis v. Fed. Election Comm'n*, 554 U.S. 724 (2008) (reaching the constitutional issue and
 19 declaring law unconstitutional where lower court rejected FEC's contention on need for
 20 substantial discovery); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (deciding
 21 a facial challenge without discovery on review of orders on plaintiff's motion for preliminary
 22 injunction and defendant's cross-motion for summary judgment).

23 Plaintiffs incorrectly contend that a state must come forward with evidence that its ballot
 24 access laws actually promote the asserted interests. *See* Dkt. 34 at 17-18. It is well-established
 25 that a State does *not* have "to make particularized showing of the existence of voter confusion,
 26 ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of

1 reasonable restrictions on ballot access.” *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-
 2 95 (1986); *see also Timmons*, 520 U.S. at 364 (noting that that courts do not “require elaborate,
 3 empirical verification of the weightiness of the State’s asserted justifications”). To do so “would
 4 invariably lead to endless court battles over the sufficiency of the ‘evidence’ marshaled by a
 5 State to prove the predicate” and “would necessitate that a State’s political system sustain some
 6 level of damage before the legislature could take corrective action.” *Munro*, 479 U.S. at 195; *see*
 7 *also Green Party of Ark. v. Martin*, 649 F.3d 675, 686 (8th Cir. 2011) (deciding evidence that
 8 Arkansas suffered from voter confusion, ballot overcrowding, or frivolous candidacies was not
 9 required and that the state had significant regulatory interests in its ballot access scheme).

10 Whether an interest adequately supports a ballot access restriction is a question of law.
 11 The Supreme Court’s analysis in *Burdick* is illustrative. In *Burdick*, the Supreme Court reasoned
 12 that “Hawaii’s interest in ‘avoid[ing] the possibility of unrestrained factionalism at the general
 13 election,’ provides adequate justification for its ban on write-in voting in November.” 504 U.S.
 14 at 439 (internal citation omitted). The *Burdick* court did not require or rely on any evidence that
 15 the ban on write-in voting, in practice, would result in unrestrained factionalism. *See id.*

16 Subsequent Ninth Circuit precedent supports the conclusion that specific evidence that
 17 ballot access laws in fact promote the asserted interests is not required. Courts “may look to any
 18 conceivable interest promoted by the challenged procedures, whether or not the state cited that
 19 interest in its briefs” and, in the Court of Appeals, whether or not cited “in the district court.”
 20 *Libertarian Party of Wash. v. Munro*, 31 F.3d 759, 763 (9th Cir. 1994) (emphasis added),
 21 *overruled on other grounds by Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1025
 22 (9th Cir. 2016).

23 Though Plaintiffs do not rely on it, *Soltysik v. Padilla*, 910 F.3d 438 (9th Cir. 2018), is
 24 distinguishable. *Soltysik* holds that where a ballot access provision imposes a serious—but not
 25 severe—burden, some factual development may be necessary. *Id.* at 448. The *Soltysik* court
 26 clear, however, that evidence not necessary in every case, only “sometimes.” *Id.* *Soltysik* is

1 inapposite for two reasons. First, the burden imposed by Washington’s signature gathering
 2 requirement is minimal; far more so than the party preference scheme challenged in *Soltysik*.
 3 The Ninth Circuit perceived it to be “self-evident” that California’s party preference scheme
 4 would confuse voters, and the statute did not apply equally to all new and smaller parties. *Id.* at
 5 446-47. As a result, the *Soltysik* court determined that the burden “is ‘serious enough’ to warrant
 6 more exacting review.” *Id.* at 446 (quoting *Dudum v. Arntz*, 640 F.3d 1098, 1114 n.27 (9th Cir.
 7 2011)). Here, by contrast, the burden of gathering 1,000 signatures at an organized assemblage
 8 is minimal and applies equally to all minor parties and independent candidates. More exacting
 9 scrutiny is not warranted. *See Tedards v. Ducey*, 951 F.3d 1041, 1067-68 (9th Cir. 2020)
 10 (distinguishing *Soltysik* on this basis). Second, unlike the plaintiff in *Soltysik*, who was
 11 responding to a motion to dismiss, Plaintiffs here *have* “had the opportunity to develop . . .
 12 evidence.” *Soltysik*, 910 F.3d at 447-48. Despite that opportunity, they have not served any
 13 discovery requests⁹ and do not ask the Court to defer its consideration of the instant motion under
 14 Fed. R. Civ. P. 56(d). Finally, Washington’s ballot access statutes are not facially
 15 unconstitutional where many minor party presidential candidates have qualified in the past (and
 16 may well qualify this year); the statutes are not “unconstitutional in all of [their] applications,”
 17 and the facial challenge must fail. *Wash. State Grange v. Wash. State Republican Party*, 128 S.
 18 Ct. 1184, 1190 (2008).

19 IV. CONCLUSION

20 Washington’s ballot access requirements provide realistic and equal opportunities for
 21 minor party candidates to qualify for ballot access. The Court should grant the motion for
 22 summary judgment.

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 26 ⁹ The parties proposed a discovery cutoff date of August 14, 2020. Dkt. 24 at 9. The parties exchanged initial disclosures on May 18, 2020, per this Court’s April 20, 2020, extension of the deadline.

1 RESPECTFULLY SUBMITTED this 7th day of August 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court of the Western District of Washington using the CM/ECF system which will send notification of such filing to:

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